WONG KIM FOONG

v.

TEAU AH KAU

HIGH COURT MALAYA, JOHOR BAHRU
ABDUL MALIK ISHAK J
[DIVORCE PETITION NO: 33-186-1996]
16 OCTOBER 1997

FAMILY LAW: *Matrimonial property - Division of houses - Whether apportionment dependent on financial contributions - Whether registered interests on property have bearing on apportionment - National Land Code 1965, s. 340 - Whether Law Reform (Marriage and Divorce) Act 1976, s. 76 should strictly apply - Whether court should consider non-financial contributions in apportionment*

FAMILY LAW: *Matrimonial property - Division of shares - Whether shares come within s. 76 of Law Reform (Marriage and Divorce) Act 1976 - Whether equal division - Whether apportionment dependant upon amount of contributions*

FAMILY LAW: *Children - Custody - Paramount consideration when awarding custody - Whether both parties or respondent alone responsible for maintenance of child - Law Reform (Marriage and Divorce) Act 1976, s. 88*

FAMILY LAW: *Financial obligation - Payment of medical expenses during subsistence of marriage - Whether respondent could be refunded - Whether claim under Law Reform (Marriage and Divorce) Act 1976 allowed*

The petitioner in her petition for divorce had prayed that she be given: (i) custody and maintenance of her son; and (ii) equal division of two immovable properties and shares. The respondent argued that the immovable properties should be distributed in direct arithmetic proportion to the financial contributions of the parties and that all the shares be returned or given to him. It was also the contention of the respondent that as he had paid for the petitioner's medical bills, he should be refunded. The issues before the court were: (i) whether the properties with indefeasible titles registered in equal shares of the parties under s. 340 of the National Land Code 1965 ('the NLC') should be apportioned with strict adherence to s. 76 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'); (ii) whether the shares should be apportioned equally; (iii) whether custody should be given to the petitioner and maintenance only from the respondent; and (iv) whether the respondent should be refunded the medical expenses which he had paid for the petitioner.

Held:

[1] Under s. 340 of the NLC, the party in whose favour the registration has been effected will obtain an indefeasible title to or interest in the land. In the absence of any of the vitiating factors laid down in s. 340 of the NLC, a title once registered, is indefeasible. In the instant case, the titles of the two properties were registered in the joint names of the parties. By virtue of s. 340 of the NLC and the case *Yap Kim Swee v. Leong Hung Yin*, the petitioner had indefeasible titles to half-shares of the two properties.

[2] In determining the division of matrimonial assets under s. 76(2) of the Act, the courts should **not** strictly apply the formula of apportioning the matrimonial assets according to the parties' respective financial contributions, but should also have regard to the non-financial contributions of a spouse falling within the purview of s. 76(4) of the Act. On a true construction of s. 76 of the Act, a spouse's contribution to the welfare of the family is a relevant consideration when the court exercises its power under s. 76(1) of the Act.

[2a] In considering the division of the matrimonial assets of the parties in the instant case, it would be unfair, unjust and an affront to commonsense to divide the matrimonial assets in direct arithmetic proportion to the financial contributions towards the purchase of the properties. If it was the intention of the parties that the two properties be apportioned according to their financial contributions, it should have been reflected in the title deeds.

[3] Custody covers and extends to the whole gamut of rights and powers vested in a parent or guardian and is governed by s. 88 of the Act. The paramount consideration is the welfare of the child. From the available evidence, it was abundantly clear that the petitioner was capable of taking care of herself and the child. It would be undesirable to disturb the life of the child and in consequence, custody should remain with the petitioner. The respondent would be given reasonable access, the terms to be determined amicably by the parties. Both the petitioner and the respondent would contribute to the maintenance of the child.

[4] Shares are assets within the meaning of s. 76(1) of the Act. Its division must be dependent upon the extent of the contribution made by each party. Therefore, as the respondent contributed double that of the petitioner in purchasing the shares, the division of the shares should be in the ratio as proposed by the respondent.

[5] Marriage is the voluntary union for life, between a man and a woman, to the exclusion of all others, and which creates and imposes mutual rights and duties. It cannot be construed as a commercial contract. The claim by the respondent for medical expenses incurred by him for the petitioner during the subsistence of the marriage was unprecedented. The Act makes no provision for this sort of frivolous claim. The claim must therefore fail.

[Order accordingly.]

Cases referred to:

Bernard v. Josephs [1982] Ch 391 ***(cit)***
Brinkley v. AG [1890] 15 PD 76 ***(cit)***
Chia Gek Yong v. Chng Hiang Keow & Yew Hwee Ming [1987] 1 MLJ 93 ***(refd)***
Crisp v. Mullings [1975] 239 Estates Gazette 119 ***(refd)***
Evelyn Tan v. Tan Lim Tai [1973] 2 MLJ 92 ***(refd)***
Falconer v. Falconer [1970] 1 WLR 1333 ***(refd)***
Fan Po Kie v. Tan Boon Son [1982] 2 MLJ 137 ***(refd)***
Gissing v. Gissing [1971] AC 886 ***(refd)***
Hewer v. Bryant [1969] 3 All ER 578 ***(refd)***
Hyde v. Hyde [1866] LR IP & D 130 ***(refd)***
J v. C [1969] 1 All ER 788 ***(refd)***
James Jemut Masing v. Fiona Frances Masing (F) nee Henderson [1994] 2 CLJ 390 ***(refd)***
KS Chua & Co v. Chui Miang Chew & Ors [1996] 2 CLJ 676 ***(cit)***
Lau Choong Choo v. Chow We Chuan [1980] 1 MLJ 6 ***(refd)***
Lee Yu Lan v. Lim Thain Chye [1984] 1 MLJ 56 ***(refd)***
Lloyd's Bank plc v. Rosset [1991] 1 AC 107 ***(refd)***
Loura Dorris a/p Laurence v. Thuraisingam a/l James [1995] 2 MLJ 229 ***(cit)***
Nagapushani v. Nesaratnam [1970] 2 MLJ 8 ***(refd)***
Ng Hwee Keng v. Chia Soon Hin William [1995] 2 SLR 231 ***(refd)***
Official Solicitor v. K [1963] 3 All ER 191 ***(cit)***
Ong Chat Pang & Anor v. Valliappa Chettiar [1971] 1 MLJ 224 ***(cit)***
Padolecchia v. Padolecchia [1967] 3 All ER 863 ***(cit)***
Pettitt v. Pettitt [1970] AC 777 ***(refd)***
Porter v. Porter [1969] 3 All ER 640 ***(refd)***
Re F [1969] 2 All ER 766 ***(refd)***
Re Rogers' Question [1948] 1 All ER 328
Re O [1962] 2 All ER 10 ***(refd)***
Rimmer v. Rimmer [1952] 2 All ER 863 ***(refd)***
Shanmugam Nagaiah & Anor v. Sivakolunthu Kumarasamy & Trustees of Ramakrishna Mission Boy's Home [1986] 2 MLJ 181 ***(refd)***
Shirley Koo v. Kenneth Mok Kong Chua [1989] 2 MLJ 264 ***(refd)***
Sim Hong Boon v. Lois Joan Sim [1973] 1 MLJ 1 ***(refd)***
Szechter v. Szechter [1970] 3 All ER 905 ***(cit)***
Teh Bee v. Maruthamuthu [1977] 2 MLJ 7 ***(cit)***
Teh Eng Kin v. Yew Peng Sung [1977] 1 MLJ 234 ***(refd)***

The Queen v. Gnygall [1893] 2 QB 232 ***(refd)***
Ulrich v. Ulrich [1968] 1 All ER 67 ***(refd)***
Wachtel v. Wachtel [1973] 1 All ER 829 ***(refd)***
Walker v. Hall [1984] FLR 126 CA ***(cit)***
Yap Kim Swee v. Leong Hung Yin [1989] 3 MLJ 55 ***(foll)***

Legislation referred to:
Evidence Act 1950, s. 114(g)
Law Reform (Marriage And Divorce) Act 1976, ss. 76(1), (2), (3), 88, 93(3)
National Land Code 1965, s. 340

For the petitioner - Sia Boon Peng; M/s Ong Ban Chai & Co
For the respondent - Chew Whye Jee; M/s Chew, Ong & Partners

JUDGMENT

Abdul Malik Ishak J:

On 29 April 1979 the petitioner Wong Kim Foong (f) was lawfully married to the respondent Teau Ah Kau @ Chong Kwong Fatt. That union was initially blissful for they spent most Sundays together in tiny Singapore notwithstanding the fact that they were resident in Johor Bahru. Once in two years both of them would take an overseas vacation. In fact, the happy couple went overseas for their honeymoon. They have been to Europe particularly to Switzerland, and Langkawi, Kedah Darulaman, and, with their son, they even proceeded to Club Mediterranean in Pahang and then onwards to Penang. They too took their son along on holidays in Australia. After the birth of their son, both the couple took a breather in New Zealand. Like most modern Chinese couples before they tied the marital knot, they cohabitated at No: 38, Jalan Tasek, Taman Tasek, Johor Bahru (hereinafter referred to as the "Tasek house"). It was obvious that they believed in pre-marital relationship. The Tasek house was purchased on 8 June 1977 in their joint names. On 24 October 1991, they jointly purchased another house at No: 12, Jalan Rosmerah 4/4, Taman Johor Jaya, Johor Bahru (hereinafter referred to as the "Johor Jaya house"). I have more to say, at a later stage, in regard to these two houses. Meantime, in regard to the Tasek house which was bought in contemplation of their marriage as the petitioner so testified, I am reminded of what Sir Raymond Evershed MR said in *Re Rogers' Question* [1948] 1 All ER 328; 27 Digest, Replacement, 264, 2130:

> When two people are about to be married and are negotiating for a matrimonial home it does not naturally enter the head of either to inquire carefully, still less to agree, what should happen to the house if the marriage comes to grief. What the judge must try to do in all such cases is, after seeing and hearing the witnesses, to try to conclude what at the time was in the parties' minds

a and then to make an order which, in the changed conditions, now fairly gives effect in law to what the parties, in the judge's finding, must be taken to have intended at the time of the transaction itself.

Both parties, as the evidence unfolded, jointly purchased shares and the petitioner averred in her petition that she held 17 share certificates of 1,000 b shares each in Lien Hoe Corporation Bhd. The respondent in his answer deposed that those 17,000 shares of RM1.00 each in Lian Hoe Corporation belonged to him. Notwithstanding this divergent view they both purchased some shares jointly. This was another striking example of that marital bond that existed between both parties. Love naturally grew between them and c eventually on 20 June 1984 the petitioner gave birth to a baby boy named Edwin Chong Lik Ming.

Good things must somehow come to an end. This case was no exception. Matrimonial difficultes cropped up and that blissful marriage broke down irretrievably. Attempts at reconciliation proved futile. d

It was said that the respondent behaved in such a way that the petitioner cannot reasonably be expected to live with him. Somehow the respondent testified, adding a new complexion to the case, that the petitioner had a boy friend. There was no cross-examination of the respondent on this point and it seemed e that it must be true (*K.S. Chua & Co v. Chui Miang Chew & Ors* [1995] 3 AMR: 2605; [1995] 4 MLJ 436; [1996] 2 CLJ 676). In fact para. 13 of the respondent's answer adverted to the intervention of a male third party as the sole cause for the breakdown of the marriage. To be fair to the petitioner she did deny the boy friend issue in her answer at bundle "A". Be that as it may, f before me the petitioner sought in para. 12 of the petition for the following prayers:

(a) that the said marriage may be dissolved;

(b) that the petitioner be granted custody of Edwin Chong Lik Ming with reasonable access to the respondent; g

(c) that the respondent do pay the petitioner a reasonable sum per month for the maintenance of their child, namely, Edwin Chong Lik Ming;

(d) (i) that the respondent do pay the petitioner half share of the nett proceeds of sale for the Tasek house which was sold on November h 10, 1993;

(ii) that the Johor Jaya house be sold and the petitioner be entitled to the half share of the proceeds of sale;

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(e) that the respondent do pay costs to the petitioner; and

(f) that such further or other relief as this Honourable Court may deem fit.

The respondent agreed that the marriage should be dissolved as reflected in para. 14 of the answer. The respondent, in para. 15 of the answer, sought for the following prayers:

(a) that the respondent may have custody of the child named Edwin Chong Lik Ming;

(b) that the immovable properties be distributed according to the formula suggested by the respondent;

(c) that the 17,000 shares of RM1 in Lien Hoe Corporation be returned to him;

(d) that S$41,000 medical fees advanced by the respondent to the petitioner be returned to the respondent;

(e) that each party to pay its own costs;

(f) any other order as this court may deem fit.

The Tasek House

In her petition, the petitioner described this house as the first matrimonial home jointly purchased by both parties in their joint names. The petitioner testified that this double storey terrace house was purchased in 1977 at the cost of RM58,500. She testified that she contributed RM8,000 and her husband also contributed to the same amount. The balance was said to have come from the bank by way of borrowing. This house was sold on 10 November 1993 but somehow the petitioner testified that she did not get a percentage out of the proceeds of that sale. In her petition she stated that this house was sold for RM230,000. Under cross-examination she testified that her husband did not say that the profit for the sale of this house would be given to her. She admitted under cross-examination that she contributed RM8,000 for the purchase of this house and no more. Under re-examination, the petitioner categorically stated that this house was purchased before their marriage and that it was purchased in contemplation of their marriage.

The respondent testified that he was a bachelor when he purchased this house. It was more of an investment exercise and this house was meant as an accomodation. At that time the petitioner was his girlfriend and she proposed to participate in the investment exercise and contributed RM8,000. The respondent categorically stated that the balance of the purchase price was borne by him and this included the bank loan. He gave a breakdown of the expenses incurred by him as reflected at p. 1 of bundle "C" and this was as follows:

(1)	Payments of instalments	...	RM68,657.96
(2)	Quit rents	...	RM 229.50
(3)	Assessment fees	...	RM 4,912.35
(4)	Miscellaneous	...	RM42,192.27
			RM115,992.08

The respondent testified further that he took a loan from United National Finance Bhd in the sum of RM40,000 and it was from this figure that the respondent had to incur instalment payments of RM68,657.96. He must have kept all the documents pertaining to this house in a meticulous fashion for he was able to produce these documents in the course of the trial. He was referred to and categorically identified those documents at pp. 9 to 138 of bundle "C" as the bills incurred by him in regard to this house. He then proceeded to identify a sale and purchase agreement dated 10 November 1993 at pp. 3 to 8 of bundle "C" of this house where the sale price was listed as RM230,000 and the vendors were described affectionately as both the respondent and the petitioner. He was bold when he said that the proceeds of sale was still with him. He proposed that his wife's share in this house be calculated and apportioned in this manner:

$$\frac{\text{RM8,000}}{\text{RM58,500}} \times \text{RM230,000} = \text{RM31,453}$$

It is pertinent to note that this method of apportionment was also reflected at para. 2 of the respondent's answer. He testified that he moved into this house in 1979 after his marriage to the petitioner.

Under cross-examination, it was revealed that the title to this house vide H.S.(D) 12219 and marked as exh. (P1) showed that both the petitioner and the respondent held equal shares to this house. He was cross-examined that it was the common intention of both parties that this house would be equally shared between them. To this, the respondent replied that the petitioner did not suggest anything of that sort at all.

The respondent went on to say, under re-examination, that he did not understand the meaning to the phrase "common intention." He categorically stated that this house was charged to a finance company and later the title was discharged as the property was sold to a third party. Unfortunately, the title to this house in exh. (P1) did not show that the property had been sold

to a third party. Mr. Sia Boon Peng, the learned counsel for the petitioner, magnanimously agreed that this house had been sold to a third party. Notwithstanding this, the respondent was still adamant and held onto the notion that their joint ownership of this house was proportionate to their contribution. This very point was laboured at length by Mr. Chew Whye Jee, the learned counsel for the respondent, of which I have more to say at a later stage. Be that as it may, the respondent maintained that he put the petitioner's name on the title to this house solely for loan purposes. A striking feature that surfaced in the course of re-examination of the respondent was this. He testified that it was not possible to register his wife's name to the title of this house as 8,000 over 58,000 shares and his name as 50,500 over 50,800 shares. He testified that he serviced the loan repayments for this house.

The Taman Johor Jaya House

This is a double storey bungalow house, the dream house of the petitioner. The respondent testified that he preferred to purchase a shophouse as a long term investment and also because it was easier to rent it out but he relented when his wife chose to buy this house. The petitioner, on the other hand, testified that she was unsure whether her husband wanted to purchase a shophouse. The respondent is still staying in this house and naturally he is still servicing the loan.

The petitioner disagreed that she contributed RM95,000 for the purchase of this house. She testified that her contribution was RM100,000 and that this money was raised through her savings and EPF withdrawals. It was her hard earned money. At p. 4 of bundle "B" her EPF withdrawals came up to RM23,653.20 sen. In her reply at para. 5 of p. 14 of bundle "B", she averred that she in fact contributed RM100,000 for this house and not RM95,000 as alleged by the respondent. She testified that this house was registered jointly with that of her husband. For the antique collection, it was her stand that she contributed RM8,000 while her mother forked out RM3,000. She considered her mother's contribution as hers. It is interesting to note that her mother by the name of Chong Chin Tan gave evidence and she confirmed that she contributed RM3,000 for the purchase of the furniture for this house.

The petitioner considered this house as her second matrimonial house. The first being, as I said earlier, the Taman Tasek house. The respondent, on the other hand, considered this house as an investment and he categorically stated at p. 10 of para. 7 in bundle "A", by way of an answer, that the purchase price of this house was RM352,952. Out of this sum, the contributions of the parties were said to be in these proportions:

	Contribution by the Respondent	Contribution by the Petitioner	Total
Downpayment	RM 97,952	RM95,000	RM192,952
Renovation, Furniture and Fitting	RM100,000	NIL	RM100,000
Loan repayment	RM 55,390 (to May 1996) and still continuing at RM1,910 per month	NIL	RM 55,390
Total	RM253,342	RM95,000	RM348,342

Without producing any supportive documentary proof, the petitioner testified that to the best of her knowledge and belief the costs of renovation, furniture and fitting came up to RM70,000 and not RM100,000 as alleged by the respondent in his answer at para. 7 of p. 11 of bundle "A". The petitioner testified that her mother did not pester the respondent to purchase the Chinese antique furniture even though the respondent sought to testify to the contrary. In fact, the respondent testified that her mother-in-law visited them at this house and it was at this time that she was purported to have said:

> We have everything except the furniture.

By way of a retort, the respondent testified that he responded and told his mother-in-law that he was still scouting around for the best. Events have showed that the mother-in-law's visit was not put across when she was in the witness box. This left an indelible mark as to the authenticity of the respondent's evidence in so far as this point was concerned.

Under cross-examination, the petitioner testified that she contributed RM100,000 and not RM95,000 as alleged by her husband; other than that she did not contribute anything else. Under re-examination, she said the same thing and she added further that she contributed RM11,000 for the Chinese antique furniture for this house. Surprisingly the respondent produced a bill from the "Singapore Handicrafts Pte Ltd" in his name and it showed the purchases for the Chinese antique furnitures which came up to S$13,000 – an equivalent of RM22,750 as reflected at p. 187 of bundle "C". The transport charges and

customs duties incurred by the respondent came up to RM3,468 as shown at p. 190 of bundle "C". The respondent also produced two documents more in the nature of a balance sheet at pp. 139 and 140 of bundle "C" which showed that he incurred expenses in the region of RM101,757.03 for this house. The respondent further produced receipts from MBSB (Malaysia Building Society Berhad) from pp. 191 to 198 of bundle "C" totalling RM55,390 as at May 1996 and these formed the monthly instalments incurred by him for this house. She said that the respondent continued to pay these monthly instalments for this house.

The respondent testified that in the event the divorce was granted by this court, he proposed to sell this house at the current market price and apportioned it to the petitioner proportionate to her contribution. He testified that the market price was in the region of RM750,000 – by way of a mere estimation, and flowing from this he proposed to apportion the petitioner's share in the following way:

$$\text{RM750,000 (or any other market price)} \times \frac{\text{RM95,000}}{\text{RM352,952}} = \text{RM201,808.80}$$

The respondent's share after the sale of this house would be according to the same formula and it would be as follows:

$$\text{RM750,000 (or any other market price)} \times \frac{\text{RM253,342}}{\text{RM353,952}} = \text{RM538,335.22}$$

Under cross-examination, the title to this house was shown to the respondent and marked accordingly as exh. (P2). The title showed equal ownership of this house between the petitioner and the respondent. The latter testified that his wife did not at any time suggest the idea that there would be common intention of both parties to share this house equally.

Division Of The Two Properties

It is not easy to quantify the quantum of these two properties for both the petitioner and the respondent. It would be recalled that the petitioner testified that the purchase of the Tasek house was done in contemplation of the marriage of both parties. Lord Denning MR in *Ulrich v. Ulrich* [1968] 1 All ER 67 CA had to deal with the problem of the parties who bought the house before their marriage. This was what his Lordship said at p. 69 of the report:

The first point is this: what is the law about money put up before marriage so as to acquire the home? It was submitted to the judge that it was just the same as any case where two strangers (not husband and wife) put up money to buy a house. If the conveyance is taken in the name of one, there is a resulting trust for the two of them, in the proportions in which they contributed. Just like the case of *Bull v. Bull* [1955] 1 All ER 253; [1955] 1 QB 234, where there was a mother and son, each of whom contributed money. It was held that, although the property was in the name of the son, there was a resulting trust in proportion to their contributions. So here the judge thought that, as the wife had contributed some 500 pound, and the husband contributed 2,000 pound by way of the mortgage, that there was a resulting trust as to one-fifth and four-fifths.

I am afraid that I cannot agree with the judge's view. In the first place, I think that money contributed by a man and woman before marriage, with a view to setting up a matrimonial home, are in the same position as moneys contributed by them after marriage. They are contributed to the purchase of property which is intended to be a family asset. When the marriage takes place, it becomes a joint asset belonging to both in equal shares. Such is the position, at any rate, if and when the marriage takes place. It might be very different if there was no marriage at all. If the marriage never took place, the whole thing might have to be cancelled. There would probably in these circumstances be a resulting trust in the proportions in which they contributed. When the marriage takes place as contemplated, however, I am satisfied that the moneys stand in the same position as moneys contributed after the marriage. I would repeat at this stage what I said in *Fribance v. Fribance* [1957] 1 All ER 357 at pp. 359, 360, in regard to family assets. These are:

> the things intended to be a continuing provision for them during their joint lives, such as the matrimonial home and the furniture in it. When these are acquired by their joint efforts during the marriage (or, I would add, before it) the parties do not give a thought to future separation. They do not contemplate divorce. They contemplate living in the house and using the furniture together for the rest of their lives. They buy the house and furniture out of their available resources without worrying too much as to whom it belongs. The reason is plain. So long as they are living together, it does not matter which of them does the saving and which does the paying, or which of them goes out to work or which looks after the home ... . The title to the family assets does not depend on the mere chance of which way round it was. It does not depend on how they happened to allocate their earnings and their expenditure ... the product should belong to them jointly. It belongs to them in equal shares.

Lord Denning MR continued in the same case in these words:

> This case stand on a par with all the marriage cases. Although the house stood in the name of the husband only, nevertheless they were equitable tenants in common, each being entitled to a half share.
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> In the second place, I differ from the judge about the mortgage. He regarded the husband as having put up 2,000 pound in cash, and to be the same as if he had saved the 2,000 pound or it had been given to him by his father or a relative. I do not regard money on mortgage as equal to a cash contribution. When the house is subject to a mortgage, the family asset is the equity of redemption in the property. That is the asset to which they are entitled in equal shares. Neither can turn the other out. Neither can sell without the consent of the other. Nor can one party sell his interest separately so as to enable the purchaser to turn the other out (see *Bedson v. Bedson* [1965] 3 All ER 307; [1965] 2 QB 666). If, however, there is a sale by the consent of both, or by the court, then the realisable proceeds (after discharge of the mortgage) belong to them equally. I hold, therefore, that during the marriage the husband and wife were equitable tenants in common in the house in equal shares.

Using *Ulrich v. Ulrich (supra)* as a leverage, Mr. Sia Boon Peng for the petitioner argued that the Tasek and Johor Jaya houses should be shared equally between the parties as these were products that belonged to them jointly. The parties never thought of future separation nor contemplate divorce. They thought that there would be longevity and that they would live together happily for the rest of their lives. That explained the furnitures that were thrown in to brighten up the Johor Jaya house. Mr. Chew Whye Jee for the respondent took the opposite view and he strenously argued that these two properties should be divided proportionately to the contributions of the parties thereto.

It was argued that the non-monetary contributions by the petitioner should be taken into account so as to do justice to her. The respondent's formula was said to be unreasonable in the extreme. The division of these properties should not be computed on the basis of their shares, earnings and expenditures but it should be viewed in the perspective that these properties belonged to them jointly. Consequently, these properties should be divided equally between them when they part company. An argument was advanced to the effect that s. 76 of the Law Reform (Marriage And Divorce) Act 1976 (Act 164) (hereinafter referred to as the "1976 Act") should not apply when considering the division of the Tasek house as the property was not acquired during the marriage. That section reads as follows:

76(1) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

(2) In exercising the power conferred by sub-s. (1) the court shall have regard to –

(a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;

(b) any debts owing by either party which were contracted for their joint benefit;

(c) the needs of the minor children, if any, of the marriage.

and subject to those considerations, the court shall incline towards equality of division.

(3) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

(4) In exercising the power conferred by sub-s. (3) the court shall have regard to –

(a) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring the family;

(b) the needs of the minor children, if any, of the marriage;

and subject to those considerations, the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion.

(5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

In *James Jemut Masing v. Fiona Frances Masing (F) nee Henderson* [1994] 2 CLJ 390, Chong Siew Fai J (now Chief Judge, Sabah and Sarawak) had occasion to consider s. 76 of the 1976 Act in the context of the purchase of the property using the wife's money but registered in the husband's name. The relevant portion of his Lordship's judgment appeared at p. 395 of the report and it was worded thus:

> It is not in dispute that ½ undivided share of the native land Lot 42 Block 14 Menuan Land District in Kapit though registered in the husband's name was bought by the wife with her own money in 1978. The value of the whole land is RM31,000. It is only right that the wife should get RM15,500 being value of the ½ share as conceded by counsel for the husband.
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> As regards the other ½ undivided share, this was bought by the husband in 1970 ie, before the marriage. Section 76(3) of the Law Reform (Marriage And Divorce) Act 1976 has no application. Nor has s. 76(5) thereof since there is no evidence of any improvement made on the land by the wife or by joint efforts of the parties.
>
> The award therefore is RM15,500 to the wife being ½ the value of the Kapit land.

Within a narrow compass, as the evidence unfolded, the petitioner's contributions to these two properties were clearly spelt out by her in these proportions. For the Tasek house, she contributed RM8,000 and no more. For the Johor Jaya house, her contribution came up to RM100,000 with an additional RM11,000 for the furniture (which included RM3,000 contribution by her mother which she considered as her own). It was unchallenged and clearly not disputed that these two properties were registered in their joint names. Now, s. 340 of the National Land Code 1965 would add a different complexion to the whole case. The party in whose favour the registration has been effected will obtain an indefeasible title to or interest in the land. That title will certainly be a title or an interest which is free from all adverse claims or encumbrances not noted on the register. In short, in the absence of any of the vitiating factors laid down in s. 340 of the National Land Code 1965, a title, once registered, is said to be indefeasible (*Teh Bee v. Maruthamuthu* [1977] 2 MLJ 7; *Ong Chat Pang & Anor v. Valliappa Chettiar* [1971] 1 MLJ 224). In regard to the Johor Jaya house, the observations of Siti Norma Yaakob J (now JCA) in *Yap Kim Swee v. Leong Hung Yin* [1989] 3 MLJ 55 are germane and should be relied upon. Her Ladyship had this to say:

> The parties have been married to each other for at least 17 years before they separated in June 1980. In 1970 they acquired the matrimonial home and it is not disputed that it was paid for from funds standing in their joint current account. The property is currently registered in their respective names with each party holding a half share each and by virtue of this alone and s. 340 of the National Land Code, the applicant has an indefeasible title to the property limited to her half share and it is immaterial for the purpose of division of this property to consider whether she had contributed to its purchase at all. As both parties intend to sell the property, she is therefore entitled to half of the net proceeds of sale representing her registered half share in the property.

In the present case, both parties agreed that the Johor Jaya house be sold and applying *Yap Kim Swee v. Leong Hung Yin (supra)* it was immaterial to consider whether the petitioner had contributed to its purchase as her entitlement to the property was limited to her half share. All the same, she did contribute to the purchase of the Johor Jaya house. The respondent placed her contribution at RM95,000. While the petitioner listed her contribution as RM100,000 excluding the furniture.

The formula advanced by the respondent as set out in the early part of this judgment would mean that:

(a) for the Tasek house, the petitioner stood to gain RM31,453 out of an investment of RM8,000; and

(b) for the Johor Jaya house, the petitioner having invested RM95,000 would gain a profit of RM201,868.80.

Mr. Chew Whye Jee argued that s. 76(1) of the 1976 Act should be vigorously applied as opposed to s. 76(4) of the same Act. It was his submission that s. 76(1) of the 1976 Act should apply for the following reasons:

(1) both the petitioner and the respondent extended monetary contributions for the purchases of these two properties and it was in the nature of a joint effort;

(2) as the repayment for the Tasek house continued during the subsistence of the marriage, the property may be considered as being acquired "during the marriage";

(3) that s. 76(4) of the 1976 Act would not apply to a glamourous working housewife like the petitioner as that sub-section was meant for plain and hardworking housewives who "look after the home or care for the family."

Flowing from this, it was argued that the proceeds for the sale of these two properties should be distributed according to the ratio of the monetary contributions of both parties.

It is now trite law that the legal and equitable interests in property vest at the time of its acquisition. In matrimonial cases, difficulty would arise if spouses buying a house, furniture or other household goods frequently throw caution to the wind and give no thought to the question of ownership. They would often regard the property as "our house." To establish a claim to the property, it is not sufficient according to Lord Bridge in *Lloyd's Bank plc v. Rosset* [1991] 1 AC 107, 130; [1990] 1 All ER 1111, 1117 HL to show that it was purchased as a joint venture or to be shared as a family home. A party's intention can best be seen from his words and conduct. Thus, if the husband

leads the wife to believe that she would share a joint beneficial interest in the house, this intention will be imputed to him even though he actually proposed to take the whole interest to himself. *Gissing v. Gissing* [1971] AC 886, 906 lays down a now famous principle of law. It is this. What the parties said and did after the property was acquired becomes relevant only as evidence of their common intention when it was bought. The House of Lords in *Pettitt v. Pettitt* [1970] AC 777; [1969] 2 All ER 385 HL held that if the spouses did not apply their minds to the question of common intention, the court cannot give effect to some other agreement that they never entered into on the ground that that would produce a just result, even though it was satisfied that they would have made it had they thought about it. Put in another way, it can be said that the court may have to infer an intention which the parties did not articulate but it cannot impute to them an agreement that they clearly did not make. Of course, the best guide for apportionment would be based on the parties' contributions, both direct and indirect, to the purchase price and mortgage repayments (*Bernard v. Josephs* [1982] Ch. 391, 404; [1982] 3 All ER 162, 170 CA). As Lord Diplock said in *Gissing v. Gissing (supra)*:

> ... nothing inherently improbable in the spouses acting on the understanding that the wife should be entitled to a share which was not to be quantified immediately upon the acquisition of the home but should be left to be determined when the mortgage was repaid or the property disposed of, on the basis of what would be fair having regard to the total contributions, direct or indirect, which each spouse had made by that date.

Lord Diplock's principle as exemplified in the above mentioned passage had been severely criticised in *Marsh v. Von Sternberg* as it created a "wavering equity". Nevertheless, the Court of Appeal divided the parties' interests in proportion to their contributions in *Crisp v. Mullings* [1975] 239 Estates Gazette 119 CA and *Walker v. Hall* [1984] FLR 126 CA. Having read these two authorities, I cannot help but feel that that was the only way of resolving an otherwise intractable problem.

Reverting back to *Pettitt v. Pettitt (supra)* the facts of which were quite plain and simple. There the husband made no contribution to the purchase price and the conveyance was solely to the wife alone. The husband spent his spare time in laying out the garden with a lawn and patio, putting up a side wall with a gate, and did various jobs of redecoration in the house itself. These chores later transpired to be very beneficial as it enhanced the value of the property. The court held that no common intention could be inferred from these domestic enhancing activities. Lords Reid and Diplock held the view that even where there was in fact no agreement as to how the beneficial ownership in the property should be held, the courts could ask what the spouses, or reasonable

people in their shoes, would have agreed if they had directed their minds to the question of what rights should accrue to the spouse who has not contributed to the acquisition of the property. Unfortunately, the majority of the Law Lords in *Pettitt v. Pettitt (supra)* did not accept this view; Lord Diplock too in *Gissing v. Gissing (supra)* conceded that this view did not represent the law. In *Gissing v. Gissing (supra)*, the wife had made no contribution to the purchase price of the property but had spent money on furnishings and on certain household expenses and the House of Lords held that no inference of any common intention that the wife was to have a beneficial interest in the house could be drawn. Both Viscount Dilhorne (at p. 900 of the report) and Lord Diplock (at p. 907 of the report) in *Gissing v. Gissing (supra)* were of the view that a common intention will most certainly be inferred where the wife has provided part of the purchase price of the house, either initially or subsequently, by paying or sharing in the mortgage payments. The wife in *Evelyn Tan v. Tan Lim Tai* [1973] 2 MLJ 92 made substantial financial contribution to the acquisition of the matrimonial home and the Singapore High Court held that the circumstances justified the conclusion that it was the common intention that both spouses share the matrimonial house in equal shares even though the property was registered in the name of the husband only.

It is pertinent to note that our s. 76 of the 1976 Act is in *pari materia* with the Singapore's Women's Charter especially s. 106 thereof. The scope of these sections are not limited to the matrimonial home. The assets which can be divided between the spouses are those which are "acquired" "during the marriage." All the authorities show that the courts are usually wary and will confine themselves to the more valuable assets acquired during the marriage. The courts are not expected to be the watch dog and to divide every single item acquired during the marriage. In *Shirley Koo v. Kenneth Mok Kong Chua* [1989] 2 MLJ 264 the assets that were acquired during the marriage were a semi-detached, an apartment, a membership of the Serangoon Garden Country Club and cash balances in the husband's accounts with various banks. It was suggested by counsel for the husband that only the semi-detached house was divisible and should be divided under s. 106 of the Women's Charter. L.P. Thean J rejected outright this kind of argument and ruled that all the four assets acquired during the marriage should be divided between the spouses.

The expression "matrimonial assets" is not a term of art. Lord Denning in *Wachtel v. Wachtel* [1973] 1 All ER 829 CA explained the phrase "family assets" in this way:

> The phrase 'family assets' is a convenient short way of expressing an important concept. It refers to those things which are acquired by one or other or both of the parties, with the intention that there should be continuing provision for them and their children during their joint lives, and used for the benefit of the family as a whole. It is a phrase, for want of a better, used by the Law Commission, and is well understood. The family assets can be divided into two parts: (i) those which are of a capital nature, such as the matrimonial home and the furniture in it; (ii) those which are of a revenue – producing nature, such as the earning power of husband and wife. When the marriage comes to an end, the capital assets have to be divided : the earning power of each has to be allocated.

In defining the term "family assets", Lord Denning in *Wachtel v. Wachtel (supra)* was not referring to s. 76 of the 1976 Act but nevertheless one can easily appreciate the broadness that can be attached to the expression "matrimonial assets."

In *Lau Choong Choo v. Chow We Chuan* [1980] 1 MLJ 6, the facts were that the parties there were both teachers. After the marriage they purchased the matrimonial home for $41,750. The wife stated that she contributed a sum of $13,000 towards the purchase of the house and that the balance thereof was secured by the husband by way of a mortgage loan. The wife made a claim that she contributed to the running of the matrimonial home. In due course, the wife obtained a divorce on the ground of cruelty and she too laid a claim to a share in the property. The court held that she was entitled to a half share in the property.

In *Fan Po Kie v. Tan Boon Son* [1982] 2 MLJ 137, both the plaintiff and the defendant purchased the housing development board flat as joint tenants. As a result of the defendant's cruelty, the plaintiff left the matrimonial home with the two children of the said marriage. In due course she obtained a divorce from the husband and was granted custody of the two children and she too received monthly maintenance payments. The defendant was prepared to refund to the plaintiff her total contribution towards the flat. It was held that as the flat was purchased jointly by the plaintiff and the defendant as their matrimonial home for the benefit of the family, the court was not prepared to endorse the defendant's action in compelling his wife and children by his cruelty to leave the flat and should not back up such action by ordering the plaintiff to sell her share in the matrimonial home. However, as the plaintiff was prepared to refund to the defendant the monies which he had paid towards the purchase price of the flat, the court held that it was equitable in the circumstances that the defendant should be ordered to deliver up to the plaintiff possession of the flat and to convey and transfer all his rights, powers and interests in the said property to the plaintiff.

Two more Singapore cases should be referred to as those cases might throw some light on the method to be adopted in the "division" of the Tasek and Johor Jaya houses. In *Shanmugam Nagaiah & Anor v. Sivakolunthu Kumarasamy & Trustees of Ramakrishna Mission Boy's Home* [1986] 2 MLJ 181, the High Court ordered that the matrimonial home which had been bought with funds from both spouses be sold and the proceeds be equally divided. The Court of Appeal [[1988] 1 MLJ 341] affirmed this decision. In *Chia Gek Yong v. Chng Hiang Keow & Yew Hwee Ming* [1987] 1 MLJ 93, the facts were that both the spouses had made monetary contributions for the purchase of the matrimonial home. The husband contributed S$51,000 and the wife S$20,000. The wife applied under s. 106 of the Women's Charter and sought for the entire property. The High Court judge ordered that the wife to take over the entire property if she could refund to the husband his monetary contributions for the purchase of that property. No precedents were cited by the High Court judge and clearly he was, as he said, "leaning towards equality." One may ask: Was it fair that the wife got the whole property and she had to refund the husband what he had paid as if it were an interest-free loan?

Back home in Malaysia, Peh Swee Chin J (now FCJ) in *Lee Yu Lan v. Lim Thain Chye* [1984] 1 MLJ 56 said at p. 57 of the report:

> There was also an alternative claim for ½ share of the proceeds of sale. On the proceeds of sale, her claim would appear to be based on her contribution to the family welfare, (s. 76(4)), and I upheld such claim. Section 76(4) itself provides for the court to divide such proceeds of sale in such proportions as the court thinks reasonable, except that the acquirer of the property in question should receive a greater share, ie, more than one-half.

The maxim that equity leans towards equality was once again demonstrated in *Nagapushani v. Nesaratnam* [1970] 2 MLJ 8. The facts in that case were that the defendant there had opened a savings account in the post office savings bank in his wife's name – the plaintiff, with an initial deposit of $250. Later, on different occasions the defendant deposited various sums from time to time. The plaintiff too took steps and deposited the savings from the household allowance given to her by the defendant into the savings account. Subsequently the defendant purchased a piece of land at S$17,500 out of which a sum of $5,600 was paid from moneys drawn from the savings account of the plaintiff. The land was registered in the name of the defendant. In 1959 the defendant executed an assignment of his rights to the property in favour of the plaintiff. In 1961 the same property was reassigned by the plaintiff to the defendant and then in 1962 the defendant assigned it in favour of his mother. The plaintiff instituted a claim alleging that she was the beneficial

owner of the property. It was held that there was a presumption of a gift to the plaintiff of the moneys deposited by the defendant into the plaintiff's savings account. The court also held that the savings from the household expenses belonged to the defendant. The court further held that as it was not possible to ascertain the exact portion contributed by each spouse, the rule that equity leans towards equality was applied and it was further held that both spouses had equal shares in the property.

In *Teh Eng Kin v. Yew Peng Sung* [1977] 1 MLJ 234, both the husband and wife jointly paid for the down payment of a house and subsequently the husband arranged to pay the instalments of the house. There was evidence that the wife was working and that she had paid for the upkeep of the house. The then Federal Court held that where both husband and wife were actively employed and have agreed to share in the purchase and running of the matrimonial home, then *prima facie* on divorce the proceeds of sale were to be divided between them in equal shares.

In my judgment, the best approach to adopt in considering the division of the Tasek and the Johor Jaya houses would be, firstly, to ascertain whether these houses were acquired during the marriage, and secondly, whether these houses were acquired by the joint efforts of the parties to the marriage or by the sole effort of one of the parties. Having found these facts, the next step would be to turn to the considerations laid down in s. 76(2) of the 1976 Act or s. 76(4) of the 1976 Act in determining the division of the matrimonial assets. Now, in my judgment, in determining the division of the matrimonial assets under s. 76(2) of the 1976 Act, the courts should not apply strictly the formula of apportioning the matrimonial assets according to the parties' respective financial contributions but instead should take a broader view of the respective financial and other contributions made by the parties together with the needs of minor children, if any, of the marriage. In short, the courts must incline and be responsive to the concept of equality of division. The courts too must have regard to the non-financial contributions of a spouse falling within the purview of s. 76(4) of the 1976 Act. It must be remembered that the factors laid down in ss. 76(2) and 76(4) of the 1976 Act are not mutually exclusive. It is obvious that the underlying purpose of s. 76 of the 1976 Act is to provide for a just and equitable division of the matrimonial assets between the spouses. It is also obvious that on a true construction of s. 76 of the 1976 Act, particularly reading it as a whole, a spouse's contribution to the welfare of the family is a relevant consideration when the court exercises its power under sub-s. (1) of s. 76 of the 1976 Act. Another salutary principle which should be repeated is this. The fact that the wife is gainfully employed and has her own income does not disentitle her to maintenance from her husband; nevertheless the quantum of such payment may be reduced. The same

argument is even stretched further and it is this. The fact that no maintenance payment is made to her during the marriage does not *ipso facto* excuse the husband's obligation to provide maintenance for the wife subsequently.

Having said that, it is obvious that the Tasek house was acquired before the marriage. The Johor Jaya house was acquired during the marriage. Both spouses contributed financially to these two houses according to the proportions as stated in the early part of this judgment.

The petitioner testified that for the past sixteen (16) years (between 1979 to 1995) she performed dutifully the household duties. She did marketing, cooking, taking care of the son and almost everything else in the Johor Jaya house. She paid the marketing and household expenses and over the years the contributions must have been substantial. When the respondent fell ill, she took care of him and practically nursed him back to health. Under cross-examination, the petitioner remarked that she would not bill her husband as they were husband and wife and that she was not that calculative to bill him. The petitioner testified and it was clear that she had motherly instinct when she said:

> ... all these while I have been attending to the needs of my son and the respondent. He goes to school early in the morning, I have to attend to him to get him ready to go to school. Anything he needs I will attend to him. I will send him for tuition and any other classes. All the while my son goes to school by bus. If my son has an extra class I will fetch him myself.

Of pertinence would be the fact that the petitioner has been attending to the needs of their only son even after the petitioner and the respondent had parted company in 1995. The petitioner unabashedly remarked, loud and clear to the whole world at large, so to speak, that as a mother she did not fail in her duty and neither did she fail in her duty as a wife to the respondent.

This was a dispute between husband and wife and not between strangers. In my judgment, the approach suggested by Mr. Chew Whye Jee that the matrimonial assets should be divided between the petitioner and the respondent in direct arithmetical proportions to the contributions must be criticised as being unfair, unjust and an affront to common sense. This court must lean in favour of equality of division. Furthermore, if it was the intention of the parties that the two properties be apportioned according to their financial contributions, it should have been reflected in the title deeds. This was not to be. The title deeds showed equal ownership to both these two properties *(Yap Kim Swee v. Leong Hung Yin (supra)*). As Sir Raymond Evershed M.R. remarked in *Rimmer v. Rimmer* [1952] 2 All ER 863 especially at p. 867:

> ... I think it would be wrong to attach to the accident of the precise figures contributed the consequence that the beneficial interests must be arithmetically related to the contributions.

It would be an exercise in futility to attempt to quantify the precise figure of the non-monetary contributions extended by the petitioner such as the love and affection showered by her, firstly, to her husband and then to her son. Not forgetting also her role in taking care of the Johor Jaya house together with the household expenses incurred by her for the past sixteen (16) years before she parted company. In short, the petitioner's contribution to the welfare of the family is also relevant in determining the division of the Johor Jaya house which has been acquired by the joint efforts of both the spouses. From the evidence – it is plain that the petitioner did contribute to the welfare of the family, notwithstanding the fact that she was working full time.

The word "welfare" was lucidly explained in *The Queen v. Gnygall* [1893] 2 QB 232, 248 in the following terms:

> Again, the term 'welfare' in this connection must be read in its largest possible sense, that is to say, as meaning that every circumstance must be taken into consideration, and the court must do what under the circumstances a wise parent acting for the true interests of the child would or ought to do. It is impossible to give a closer definition of the duty of the court in the exercise of this jurisdiction.

It seems to me that the formula proposed by the respondent in regard to the Johor Jaya house failed to take into account the RM11,000 contributed by the petitioner towards the acquisition of the Chinese antique furniture which to a certain extent must have enhanced the value of the Johor Jaya house. The petitioner here was just like the husband in *Pettitt v. Pettitt (supra)* who did various jobs of redecoration to the house that eventually enhanced the value of the property notwithstanding the fact that the court in *Pettitt v. Pettitt (supra)* refused to infer common intention from these domestic enhancing activities.

It was strenously argued that this court should incline towards equality of division after taking into account the provisions of sub-s. (2)(a), (b), (c) of s. 76 to the 1976 Act. In *Wachtel v. Wachtel (supra)* the court there took into consideration the contribution made by the wife in looking after the home and family. Lord Denning MR succintly said:

> ... we may take it that Parliament recognised that the wife who looks after the home and family contributes as much to the family assets as the wife who goes out to work. The one contributes in kind. The other in money or money's worth. If the court comes to the conclusion that the home has been acquired and maintained by the joint efforts of both, then, when the marriage breaks

> down, it should be regarded as the joint property of both of them, no matter in whose name it stands. Just as the wife who makes substantial money contributions usually gets a share, so should the wife who looks after the home and cares for the family for 20 years or more.

The wife's contribution was also emphasised in *Porter v. Porter* [1969] 3 All ER 640 at 644; [1969] 1 WLR 1155 at 1160, where Sachs LJ said : "... the court must always take into account how long the marriage has lasted and to what extent the wife has rendered her domestic services to the husband."

The Singapore's Court of Appeal in *Ng Hwee Keng v. Chia Soon Hin William* [1995] 2 SLR 231 held, *inter alia*, that in construing s. 106(2) of the Women's Charter (as I said it is in *pari materia* with our s. 76(2) of the 1976 Act), particularly in determining a division of matrimonial assets, the courts do not in all cases apply a formula strictly in proportion to the parties' respective financial contributions. The courts would take a broader view of the respective financial and other contributions made by the parties more towards equality of division.

In terms of monetary contributions for the acquisition of the Johor Jaya house, the respondent undoubtedly contributed more than the petitioner. It would not be wrong to say that the petitioner's financial contribution was approximately in the region of 30% as opposed to that of the respondent which can fairly be computed at 70%. But financial contribution is not the sole criteria. Credit must be given to the petitioner. She contributed, in large doses, to the welfare of the family. For fear of repetition, there was ample evidence that she had looked after the home, albeit with the aid of the maid. She had cared for the family and performed the varied domestic chores. As Lord Denning MR said in *Falconer v. Falconer* [1970] 1 WLR 1333 especially at p. 1336:

> It may be indirect, as where both go to work, and one pays the housekeeping and the other the mortgage instalments. It does not matter which way round it is. It does not matter who pays what. So long as there is substantial financial contribution towards the family expenses, it raises the inference of a trust.

In my judgment, regard must be given to the non-financial contributions of a spouse in terms of s. 76(4)(a) of the 1976 Act for one simple reason. There should not be a distinction between s. 76(1) of the 1976 Act with that of s. 76(3) of the 1976 Act. These sub-sections must be read cohesively in order to give it statutory flavour.

Mr. Chew Whye Jee submitted that since the petitioner and the respondent operated a separate bank account, each having their own earnings and each paying income tax separately then they must have intended that the Tasek and Johor Jaya houses be distributed proportionately to their contributions therein.

This submission overlooked a lot of salient facts. Firstly, the titles of these two houses were in the joint names of the parties. Secondly, the petitioner's contribution to the welfare of the family by looking after the home as envisaged under s. 76(4)(a) of the 1976 Act. Thirdly, the petitioner enhanced the value of the Johor Jaya house by purchasing the Chinese antique furniture plus a host of other considerations. In short, I must give credit for her contribution to the welfare of the family. While I accept the fact that the respondent has faithfully carried out his role as the master of the house and has fully and responsibly discharged his obligations in regard to his son's education, this does not mean that the petitioner did not contribute to the family's welfare. From the evidence which I do not propose to repeat, she had played a major role to bring the family together for the last sixteen (16) years. There was an allegation that the petitioner had a boyfriend. But no allegation was made nor was it supported by evidence that she had committed adultery like the wife in the case of *Yap Kim Swee v. Leong Hung Yin (supra)*. At any rate, as I said earlier, the petitioner had denied having a boyfriend as reflected in her answer at para. 10 of bundle "A". In my judgment, looking at the totality of the evidence and putting the matter at its highest for both the parties it would be best that these properties be divided equally between them. It is germane to mention that all the English authorities referred to in this judgment are mere guidelines as the facts were entirely different from the present case. In these English authorities, the matrimonial homes were invariably registered or vested in the name of one of the spouses. Here, the two houses were co-owned by both the parties.

Custody And Maintenance Of Edwin Chong Lik Meng

Out of that marriage, a son was born. He is now about 13 years of age and studying in Singapore. That boy should be in secondary 1 now. Both the petitioner and the respondent want custody of that boy.

The word "custody" has a wide meaning. It covers and extends to the whole gamut of rights and powers vested in a parent or guardian. Sachs LJ in *Hewer v. Bryant* [1969] 3 All ER 578, 585, CA defined the meaning of "custody" in these words:

> In its wider meaning the word 'custody' is used as if it were almost the equivalent of 'guardianship' in the fullest sense ... . Adapting the convenient phraseology of counsel, such guardianship embraces a 'bundle of rights' or to be more exact a 'bundle of powers', which continue until a male attains (18) or a female infant marries. These include the power to control education, the choice of religion, and the administration of the infant's property. They include entitlement to veto the issue of a passport and to withhold consent to marriage. They include also both the personal power physically to control the infant until

the years of discretion and the right .... to apply to the courts to exercise the powers of the crown as *parens patriae*. It is thus clear that somewhat confusingly one of the powers conferred by custody in its wide meaning is custody in its limited meaning, namely such personal power of physical control as a parent or guardian may have.

Lord Denning MR in the same case described custody as "... a dwindling right which the courts will hesitate to enforce against the wishes of the child, and the more so the older he is. It starts with a right of control and ends with little more than advice."

Custody is a sensitive issue. It hinges on affection and from it love blossoms. Section 88 of the 1976 Act enacts as follows:

88(1) The court may at any time by order place a child in the custody of his or her father or his or her mother or, where there are exceptional circumstances making it undesirable that the child be entrusted to either parent, of any other relative of the child or of any association the objects of which include child welfare or to any other suitable person.

(2) In deciding in whose custody a child should be placed the paramount consideration shall be the welfare of the child and subject to this the court shall have regard –

(a) to the wishes of the parents of the child; and

(b) to the wishes of the child, where he or she is of an age to express an independent opinion.

(3) There shall be a rebuttable presumption that it is for the good of a child below the age of seven years to be with his or her mother but in deciding whether that presumption applies to the facts of any particular case, the court shall have regard to the undesirability of disturbing the life of a child by changes of custody.

(4) Where there are two or more children of a marriage, the court shall not be bound to place both or all in the custody of the same person but shall consider the welfare of each independently.

Since the paramount consideration would be the welfare of the boy, an argument was advanced that it was for his welfare that custody be given to the respondent. Mr. Chew Whye Jee advanced the following reasons as to why custody of the boy should be given to the respondent:

(1) That the petitioner is not physically fit to look after the boy because she herself needs medical care. At p. 18 of the notes of evidence she testified:

> I had two major operations. One was due to the haemorrhage of the pancreas and the other was the bleeding of the stomach.

Again at p. 26 of the notes of evidence, she admitted:

> Till today I am still on medication daily. I consumed tablets by the name of Pranamol. Its a pill for blood pressure in order to control the stomach pressure. I am also a diabetic but under control. I take tablet to control my diabetic.

(2) That the petitioner depends on her mother to take care of the child. This piece of evidence finds corroboration in the evidence of the petitioner's mother, one Chong Chin Tai. At p. 33 of the notes of evidence the petitioner's mother testified that:

I am prepared to continue taking care of my grandson in the future.

(3) That the respondent is a loving person. It was said that the respondent had offered to reconcile with the petitioner but she refused. The respondent demonstrated this loving trait, so it was submitted, at p. 54 of the notes of proceedings:

> If my wife is willing to take me back as her husband, I am willing to accept her as my wife

(4) The boy was not called to testify although he is of an age capable of expressing an independent opinion. I am asked to draw an adverse inference under s. 114(g) of the Evidence Act 1950 against the petitioner from the failure to call the boy to the stand. Flowing from this, it was said that the balance of probability was in favour of that boy staying with the respondent. Now, this was not a case where one party withholds or suppresses evidence. It is true that the boy, their only son, was not called to give evidence in court by the petitioner but the opportunity to call the boy was also afforded to the respondent. Obviously the boy was not only the petitioner's witness but he was also the respondent's witness. Bluntly put, the boy was a common witness to both parties. The boy was present throughout the whole trial. If the adverse inference under s. 114(g) of the Evidence Act 1950 could be triggered against the petitioner, the converse would also be true.

(5) It was said that s. 88(3) of the 1976 has no application as the boy is now 13 years of age. It was also said that the boy is best suited to stay with his father – the respondent, rather than with his mother. It was emphasised that the boy has to grow up as a man and he should therefore live with a man. The respondent, it was said, as a father

could provide for the boy better. Both the respondent and the boy can stay together harmoniously.

(6) That it is not in the best interest of the boy to stay with his mother who pampers him too much. The petitioner testified as seen at p. 29 of the notes of evidence that:

> I require RM1,200 to maintain my son after I (am) separated from my husband.

Then at p. 30 of the notes of evidence, she remarked:

> I don't think I would spoil my son by giving him RM1,200 .... All these are daily expenses. .... My son is wearing Bata shoe and not Reebok shoe. He likes to eat at MacDonald as opposed to warong. Every child likes to eat at MacDonald.

Flowing from this, it was argued that at RM40 per day, if the boy is not spoilt then the mother is. It was Mr. Chew Whye Jee's submission that at RM1,200 per month, many parents are sending their children to universities.

(7) That it is not in the interest of the boy for custody to be given to the petitioner as the latter has a boyfriend. My attention was drawn to p. 50 of the notes of evidence, where the respondent testified that "the marriage broke down because she had a boyfriend outside.

It must be emphasised that the petitioner did not clarify the position of that boyfriend when she took the stand. Neither was this issue put forth to her so that the matter would be ventilated. However, there was denial by her as to this boyfriend issue at para. 10 of the bundle "A" of her answer. Incidentally, when the petitioner's mother gave evidence, she was not cross-examined about the boyfriend issue. I am not in a position to conjecture as to why this boyfriend issue was not highlighted at the time when the petitioner's mother gave evidence in the witness box. Be that as it may, Mr. Chew Whye Jee suggested that in the event custody was awarded to the petitioner, the respondent should be ordered to maintain the boy at RM600 per month. The petitioner testified at p. 29 of the notes of evidence that "RM400 for the tuition and bus fare and RM100 clothing a month would entail school uniform and other types of clothing" for the boy and these pieces of evidences must have influenced Mr. Chew Whye Jee to make that suggestion. A submission was also advanced that the petitioner as the mother should be ordered to pay RM600 per month for the boy's maintenance as she was also gainfully employed. Finally, it was submitted that custody should immediately revert back to the respondent once her illness relapsed.

Mr. Sia Boon Peng rightly submitted that the welfare of the boy was of paramount importance. The petitioner's concern for the welfare of the boy was said to be amply exhibited in the following terms. For fear of repetition, the petitioner did say that "all these while I have been attending to the needs of my son and the respondent. He goes to school early in the morning, I have to attend to him to get him ready to go school." The petitioner testified further and this was what she said:

> Anything he needs I will attend to him. I will send him for tuition and any other classes. All the while my son goes to school by bus. If my son has an extra class I will fetch him myself.

From the available evidence, it is abundantly clear that the petitioner has been doing all these chores even after she parted company with him in 1995. There was truth and cogency in the petitioner's evidence when she said that as a mother she had showered her love, affection and dedication to the boy.

Mr. Sia Boon Peng submitted that the respondent was an uncaring husband. A morally reprehensible individual. The respondent had testified that he was not under a moral obligation to foot the medical expenses of his legally married wife. With this scenario in mind, Mr. Sia Boon Peng submitted that the respondent was not a fit person to have custody of the boy. It was emphasised that the respondent was a director of a used car company with long hours of working period – from 9am to 5pm and at times had to work overtime. He had to work six (6) days per week. With this heavy work commitments, the respondent hardly have sufficient time to exercise proper care for the boy nor has he the ability or the capacity to look after the boy.

Since the birth of the boy, the petitioner has taken care of him. The boy has all along been staying with the petitioner. In my judgment, she has not failed in her duty as a mother. The medical report from Dr. Ho Ung Chek at p. 1 of bundle "B" is self explanatory. That medical report has to a great extent rebutted the respondent's allegation that the petitioner is a chronically ill person. The doctor did say that the petitioner's diabetic condition was under good control and that there was no reason to expect that the petitioner should not have a normal life span. Of pertinence to note would be this: That no evidence was adduced that the petitioner was not capable of taking care of herself and her son. There was no evidence at all that she was an adulteress like the woman in *Loura Dorris a/p Laurence v. Thuraisingam a/l James* [1995] 2 MLJ 229. The boyfriend issue was a non-issue as it was not elaborated nor highlighted by the respondent. There was ample evidence that the petitioner was capable of taking care and continue to take care of the boy. The grandmother of the boy testified categorically that she was prepared to continue taking care of her grandson in the future. In strong words, she said that:

> The welfare of my grandson would be better attended to if he stays with me and my daughter rather than put my grandson in the custody of the respondent.

In my judgment, it would be undesirable to disturb the life of the boy and that custody should remain with the petitioner.

Whatever promises and advantages suggested by the respondent remained purely speculative. It is beyond dispute that maintaining continuity of care is a crucial factor in custody cases. The untold damage that would be done to the emotional development of the boy if he is suddenly removed from a known, secure, supporting set of relationship would be beyond redemption. In my judgment, the respondent has not shown that he can offer a "better deal" for the boy particularly the welfare of the boy as to justify this court to disturb the life of the boy by a change of custody. On appraisal of the available evidence, it is undeniable that despite her illness she has been the source of strength for the boy. She has been closest to the boy since birth. The boy has been with the petitioner since birth. It appears that the petitioner has a supportive mother ever ready and fully capable to provide love, care, and affection for the boy when the petitioner goes out to work. No evidence of this nature was forthcoming from the respondent. From the available evidence, it is apparent that the petitioner devoted her free time for the welfare of the boy. Of course, once custody is given to the petitioner reasonable access should be given to the respondent.

As Lord MacDermott said in *J. v. C.* [1969] 1 All ER 788, HL; [1970] AC 668:

> ... when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood.

Even though the House of Lords ruled that the trial judge was entitled to depart from the normal rules of evidence if this was necessary for the child's interest by seeing the child or each of the parents in private as reflected in *Official Solicitor v. K.* [1963] 3 All ER 191, HL; [1965] AC 201, yet this was not resorted to as the matter proceeded to trial. I was acutely aware that this court must reach the best decision it can on all the evidence put before it. Megarry J rightly pointed out in *Re F* [1969] 2 All ER 766, 768; [1969] 2 Ch. 238, 241 that the welfare of the child cannot be solved arithmetically or quantitatively by using some sort of "points system." Emphasis was laid on the sex of the child in the present case. This brings to mind the case of *Re O.* [1962] 2 All ER 10 CA, where an English woman who had married a Sudanese brought the son and daughter of the marriage back to England. The

English Court held that the boy, who was aged six or seven, should go back to Sudan with his father where he would eventually succeed to his business, whilst the girl, who was a year or so younger, should stay in England with her mother apparently, it seemed, on the ground that the future prospects of a girl of mixed parentage was better in England. Had *Re O. (supra)* been decided in Malaysia, the results may be different.

In *Sim Hong Boon v. Lois Joan Sim* [1973] 1 MLJ 1, the parties were married in March 1965. The husband was a Singapore citizen and the wife an Australian citizen. In December 1967, their son was born. After the birth of that boy and before March 1969 the wife had an affair with someone in Singapore. The husband objected and thereafter the marriage was heading for the rocks. In March 1969 the husband had to go to Europe in the course of his duty as an architect. The husband allowed the wife to go to Australia for a holiday taking with her their son. The wife left for Australia with her son and never returned to Singapore. The husband petitioned for custody of the child and the High Court refused to entertain him as the child was outside jurisdiction. On appeal to the Singapore Court of Appeal, Wee Chong Jin CJ ordered that the custody of the boy be given to the husband. This was what his Lordship said:

> It is said that as the paramount consideration is the welfare of the child it would not be in the child's welfare for him after a lapse of 2½ years from March 1969 till now and during which years the child has become accustomed to a way of life different from a way of life here, to uproot him and separate him from his mother to take up life in totally different surroundings and circumstances. While that is a strong factor, a factor which the court must consider, it is equally clear, we think, that in the case of a male infant, at any rate a consideration of the fact that a mother is in a better position to bring up a child is different from the case of a female infant.

Must I therefore be bound by these authorities and order that the boy be kept in the custody of the respondent? Factually these two authorities dealt with the offsprings of mixed marriages from two different cultures. Here, the parties are local Chinese and different considerations must therefore apply.

Even assuming for one moment that both the petitioner and the respondent are equally capable of providing the care, comfort and attention to the boy, the supportive evidence of the petitioner's mother weighed the scale in favour of the petitioner. It is my judgment, that the petitioner should be given custody of the boy forthwith. The respondent, as the father of the boy, should be given reasonable access – the terms of which to be determined amicably by the parties.

In regard to maintenance, the petitioner testified that she required RM1,200 per month. She explained that:

> This is an estimation and by next year my son will go to secondary school provided he passes his primary 6's examination.
>
> (1) Food RM450.
>
> (2) Pocket money RM120.
>
> (3) Tuition fee RM360
>
> (4) Bus fare RM80
>
> (5) Clothing RM100
>
> (6) Buying assessment book and stationary RM50.

The petitioner testified that she contributed to the son's pocket money, food and clothing. No figure was quoted by the petitioner. The petitioner did say good things about the respondent. For instance, she said:

> Until today my husband still pays the school fees and gives RM500. for the maintenance of my son.

The school fees must been on the higher side as the boy is currently studying in Singapore. The amount of maintenance computed by the petitioner in the sum of RM1,200 is mere pittance as compared to the costs of education in Singapore of which the boy is now accustomed to. The choice of sending the boy to Singapore for his education must have been made by both the parents. A choice which wss made in bad taste bearing in mind the weak ringgit.

The respondent agreed under cross-examination that he earned more than the petitioner. He testified that when the petitioner was undergoing medical treatment he was earning about RM3,000. But he was unable to recall his wife's monthly salary. Nor was he minded to ask her. The respondent at the time of giving evidence held the prestigious post of a managing director of a motor car company. The petitioner held the post of an office manager of Autofin Associates Johor Sdn Bhd. The petitioner had a boutique shop known as Suzuya Boutique from 1983 to 1991 and a cosmestic shop by the name of Beautique Enterprise from 1982 to 1996. There was evidence that the petitioner purchased her stocks for the Suzuya Boutique in Hong Kong. That must have been a profitable venture. The petitioner is gainfully employed and must be held responsible to pay some part of the maintenance for her son as envisaged under s. 93(2) of the 1976 Act. It would be most unfair if the husband is ordered to shoulder payment of the whole of RM1,200 for the maintenance

of the boy. In my judgment, having regard to the available evidence the fair sums that both the petitioner and the respondent should contribute for the maintenance of the boy would be in the following ratio:

> The petitioner should be ordered to pay RM400 per month for the maintenance of the boy. The respondent, as the father of the boy, should be ordered to pay RM800 per month maintenance for the boy and such payment should be advanced to the petitioner as envisaged under s. 93(3) of the 1976 Act.

The Shares

Shares are assets within the meaning of s. 76(1) of the 1976 Act. It's division must be dependent upon the extent of the contributions made by each party. The petitioner testified at p. 28 of the notes of evidence to the following effect:

> I gave RM65,000 to my husband to buy shares, not necessary Lien Hoe shares. We both lost monies in shares but we also did make some monies. In the end I would not know whether I made money out of buying shares because I asked my husband to give me the account but he did not do so. I am holding 17 Lien Hoe shares.

The petitioner continued in the same vein:

> Sometime in 1993 I gave RM65,000 to my husband to buy shares. My husband bought the Lien Hoe shares in 1993 at RM6.50 per share. Now the price of Lien Hoe share is about RM2.30 per share. In other words, I lost a substantial amount. The shares are still there. Not sold yet.

At p. 45 of the notes of proceedings, the respondent testified to this effect:

> I often buy shares. Yes, she also often buy shares. We do combine our efforts in buying shares.
>
> In 1993, in February she suggested to buy shares. She gave me RM64,272.79 on four occasions. On 10 February 1993 she invested RM8,163.23, on 12 March 1993 she invested RM3,641.80, on 10 November 1993 she invested RM26,467.07, on 28 December 1993 she invested RM26,000. Initially we made some money. Sometimes we lost. I made contributions in buying shares – easily double the amount.
>
> She did ask me what shares to buy. She buys Lien Hoe shares because she had tips from the board of directors. Initially we made some money and at times we lost. When we made money she became greedy. She bought by contra method from Johor Bahru and at times from Singapore. We lost very heavily towards end 1993 and beginning 1994.

It is apparent that both the petitioner and the respondent were actively involved in purchasing shares. They did well initially but later they lost very heavily. The got their fingers burnt. Such is the game that only the brave and the foolish would dare tread.

The respondent continued in his testimony at p. 46 of the notes of evidence where he said:

> From memory she invested RM64,700 and towards the end of 1993 and beginning of 1994 we lost heavily on the contra basis.
>
> It is not so easy to remember the details of the shares. We bought far too many.
>
> At the end of the day, I was stuck with 17 lots of Lien Hoe shares. These shares not registered in my name nor that of my wife. We bought these shares without registering it in our names. No need to register those shares in our names.
>
> The transfer form and the share certificate were kept in the safe box of the bank by us and she took them.

The respondent then proposed a formula for the division of the shares and this is reflected at p. 47 of the notes of evidence:

> From memory, my wife was entitled to 5 lots of Lien Hoe shares. She merely had RM30,000 in her name and according to the formula the total amount of shares which we bought was RM111,676 and from that figure I minus RM30,000 as her share leaving the balance of RM81,676. So I propose to give the respondent RM81,676 over RM111,676 times 17 lots and it gives a figure of 12.43 lots.
>
> To the petitioner, I propose to give according to this calculation:
>
> RM 30,000
> ---------- x 17 = 4.56 lots
> RM111,676

Mr Chew Whye Jee magnanimously rounded up 4.56 lots to 5 lots. This was the quantum which the petitioner was said to be entitled out of the 17 lots of Lien Hoe shares. The respondent sought for the return of 12 lots of Lien Hoe shares from the petitioner.

Mr. Sia Boon Peng submitted that the petitioner should be given the Lien Hoe shares according to what was fair and reasonable. Now, bearing in mind that the respondent contributed double than that of the petitioner in purchasing those shares – a fact that was not disputed, the formula advanced by the respondent

appeared to be fair and reasonable in the circumstances. The division of the 17 shares of Lien Hoe should be in the ratio as proposed by Mr. Chew Whye Jee. This was my judgment and I so ordered accordingly.

Medical Expenses

The petitioner was unwell and the doctors in Singapore treated her. The respondent incurred S$41,419 medical bills and he had settled them by borrowing from friends. In the respondent's answer at para. 15, a sum of S$41,000 was mentioned. As the parties are bound by their pleadings, I will only rely on S$41,000 and not S$41,419. The respondent now want the petitioner to return that money in the same amount to him. The respondent was of the view that he was not under a moral obligation to foot the medical expenses of his legally married wife. In the same breath the respondent remarked that he was not an extremely calculative person. Should this court order the petitioner to return S$41,000 to the respondent?

Mr. Chew Whye Jee submitted that the marriage between the parties was in the form of a contract and that upon its breach, each party must restore the other to its original position. That was a novel submission which threw the concept of sanctity of a union between a man and a woman out of the window. Marriage is defined as the ceremony entered between a man and a woman which ceremony makes them to be husband and wife. It is, in English law, to be an agreement between a man and a woman which creates and imposes mutual rights and duties. But a marriage contract is quite unlike a commercial contract and there are marked dissimilarities between the two. Of pertinence to note would be the following dissimilarities:

(1) Special formalities are needed and must be fulfilled before a marriage vow is exchanged between the parties.

(2) The law relating to capacity to marry is entirely different from that of, say, the sale of goods.

(3) What are said to be void and voidable in a marriage can never be the same for other contracts.

(4) A voidable marriage cannot be declared *void ab initio* by repudiation by one of the parties but it may be set aside by a decree of nullity pronounced by a divorce court.

(5) A marriage once contracted cannot be discharged by agreement, frustration or breach.

Lord Penzance in an old English case of *Hyde v. Hyde* [1866] LR I P. & D. 130 defined marriage in this way:

> I concieve that marriage, as understood in Christendom, may ... be defined as the voluntary union for life of one man and one woman to the exclusion of all others.

The facts in *Hyde v. Hyde (supra)* may be stated briefly as follows. There the petitioner who was originally domiciled in England, embraced the Mormon faith and went out to Utah at a time when polygamy was still being practised by Mormons. There he married the respondent. Later after several years he renounced Mormonism and then returned to England. When he returned, he asked his wife to follow him. She refused. There was thus an ex-communication and under Mormon law she was free to marry again. She did marry again and this was with the co-respondent. This prompted the husband to petition for divorce on the ground of the wife's adultery. Lord Penzance held that since the marriage between the petitioner and the respondent being polygamous in nature the court refused to entertain the divorce proceedings.

Hyde v. Hyde (supra) was a case considered within the context of a Christian marriage. The vital test to see is whether the parties have the capacity to marry by his or her *lex domicilii* at the time of the ceremony (*Padolecchia v. Padolecchia* [1967] 3 All ER 863, 873; *Szechter v. Szechter* [1970] 3 All ER 905). Thus, in *Brinkley v. A.G.* [1890] 15 PD 76 the marriage between a man domiciled in Ireland and a woman domiciled in Japan before the civil authority in Tokyo was recognised as a valid marriage.

So much for digression. Now, to the issue at hand.

Of pertinence, would be the evidence of the petitioner when she was questioned in regard to the hospital bills. This was what she said at p. 19 of the notes of evidence:

> The contribution given by my husband was voluntary in nature.

This piece of solitary evidence remained on record and it was not challenged by way of cross-examination.

Under cross-examination, the petitioner remarked that she did not know that her husband borrowed money for her treatment in Singapore.

Under examination-in-chief, the respondent showed his true colours as reflected at p. 49 of the notes of evidence:

> Pages 199 to 252 of bundle 'C' are the medical bills incurred by me and it came to S$41,419. This was for two occasions. I want her to repay me this money. She's a business woman, she runs a business. I have no money and I have to borrow from friends for the medical fees.

Bluntly put, the respondent's claim under this category opens a new vista for the development of family law in this country. It is an unchartered area. A murky water that calls for caution and circumspection. It is a claim by a husband for medical expenses incurred by him when his legally married wife, as opposed to a mistress, is hospitalised. It is a claim incurred by the husband during the subsistence of the marriage. This claim is unprecedented and it reflects the hatred, bitterness, and vindictiveness of the husband. The marriage produced a son. The wife did not claim for pain and suffering experienced by her in delivering the son. The wife has given an heir to the husband. The son will carry the name of the husband and if that is not posterity, I do not know what is. As demonstrated the marriage between the parties cannot be construed as a commercial venture. It was a marriage contract that should be viewed differently from a commercial contract. As the respondent had voluntarily advanced S$41,000 as medical fees for the petitioner, the question of restoring the respondent to his original position by way of a re-imbursement did not arise at all. I am sure as an Asian husband, it did not cross the respondent's mind to seek a re-imbursement of the medical expenses incurred by him for his wife during the subsistence of the marriage. At any rate, the 1976 Act makes no provision for this sort of frivolous claim. It is a claim that will not succeed in this court and must fail *in limine.*

To summarize, the orders made by this court were as follows:

(a) That the Tasek and Johor Jaya houses are to be divided in equal shares between the parties;

(b) That the petitioner be given custody of Edwin Chong Lik Ming with reasonable access to be accorded to the respondent – the terms of which must be mutually agreed between the parties;

(c) That the petitioner to pay RM400 per month and the respondent to pay RM800 per month as maintenance contributions to Edwin Chong Lik Ming – their son. The respondent's monthly maintenance should be advanced to the petitioner as envisaged under s. 93(3) of the 1976 Act;

(d) That 5 lots of the Lien Hoe shares should be given to the petitioner. The remainder of 12 lots of Lien Hoe shares should go to the respondent;

(e) The sum of S$41,000 which comprised the medical fees as claimed by the respondent to be dismissed forthwith;

(f) That each party to pay its own costs.

A major order was also made which struck at the root of the matter and this was, as agreed by the respondent, that the marriage to be dissolved. An order to that effect was made.

Reported by Anne Soh